

STATE OF MICHIGAN
COURT OF APPEALS

RONALD J. KALANQUIN, as Trustee of the
BARBARA KALANQUIN TESTAMENTARY
TRUST,

UNPUBLISHED
May 19, 2011

Petitioner-Appellant,

v

TOWNSHIP OF RICHFIELD,

No. 297342
Michigan Tax Tribunal
LC No. 00-332808

Respondent-Appellee.

Before: MARKEY, P.J., and FITZGERALD and SHAPIRO, JJ.

PER CURIAM.

Petitioner appeals as of right the March 16, 2010, final opinion and judgment of the Michigan Tax Tribunal that affirmed in part and modified in part the hearing referee's proposed opinion and judgment determining the taxable value of petitioner's parcel of real property (the subject property). We reverse and remand.

Petitioner essentially argues that the tax tribunal erroneously uncapped the taxable value of the subject property by failing to apply the relevant exception, MCL 211.27a(7)(g). We agree. Absent fraud, we review a decision by the tax tribunal to determine whether it erred in applying the law or adopting a wrong legal principle. *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). Questions of statutory interpretation are subject to de novo review. *Halloran v Bhan*, 470 Mich 572, 576; 683 NW2d 129 (2004).

"[W]hether a property's taxable value remains capped is intrinsically linked to whether there has been a 'transfer of ownership.'" *Klooster v City of Charlevoix*, 286 Mich App 435, 439; 781 NW2d 120 (2009), rev'd on other grounds 488 Mich 289 (2011). MCL 211.27a(6) defines "transfer of ownership" as "the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest." The general property tax act includes "a nonexhaustive list of events that will constitute a transfer of ownership, MCL 211.27a(6), and events that do not constitute such a transfer, MCL 211.27a(7)." *Id.* The uncapping of a parcel's taxable value typically results in a higher tax assessment, as was the case here. *Id.* at 438.

Tax exception statutes are generally construed narrowly in favor of the taxing authority, and we generally defer to the tax tribunal's interpretation of a statute that it is charged with

administering and enforcing; however, these principles do not allow a strained construction of a statute that is adverse to the Legislature's intent. *Moshier v Whitewater Twp*, 277 Mich App 403, 409; 745 NW2d 523 (2007). Here, the tax tribunal failed to discuss the applicability of MCL 211.27a(7)(g). In its final opinion and judgment, the tax tribunal provided a broad generalization that "[t]he exemptions under MCL 211.27a(7) dealing with testamentary transfers and transfers via trust instruments stand for the proposition that as long as property is transferred from spouse to spouse or to a trust created for the sole benefit of the spouse, the legislature feels a transfer of ownership for uncapping purposes does not occur." The exceptions "dealing with testamentary transfers and transfers via trust instruments" have nothing to do with the applicability of MCL 211.27a(7)(g). We will simply apply the terms of the MCL 211.27a(7)(g) to the circumstances of this particular case, *Niles Twp v Berrien Co Bd of Comm'rs*, 261 Mich App 308, 313; 683 NW2d 148 (2004), and find that the plain meaning of MCL 211.27a(7)(g) could not be any clearer: a transfer of ownership does not include "[a] transfer pursuant to a judgment or order of a court of record making or ordering a transfer, unless a specific monetary consideration is specified or ordered by the court for the transfer." In this case, the probate court ordered that the subject property be transferred from the decedent's Living Trust to the decedent's Testamentary Trust. MCL 600.847 provides that "the probate court shall have the same powers as the circuit court to hear and determine any matter and make any proper orders to fully effectuate the probate court's jurisdiction and decisions." A probate court is clearly a court of record. *In re Reiswitz*, 236 Mich App 158, 172; 600 NW2d 135 (1999). It is undisputed that the decedent's personal representatives initiated probate proceedings. In the exercise of the probate court's jurisdiction, it may hear and determine any matter and make any order to fully effectuate the court's decisions. MCL 600.847. We conclude that the present case did not involve a transfer of ownership, where the transfer occurred pursuant to an order of the probate court.¹ MCL 211.27a(7)(g). Thus, we reverse the tax tribunal's ruling that erroneously uncapped the taxable value of the subject property, and misapplied the relevant legal principles by failing to consider and apply the relevant exception. *Ford Motor Co*, 475 Mich at 438.

In light of our conclusion that the tax tribunal erroneously uncapped the taxable value of the subject property, two of petitioner's remaining allegations of error are rendered moot. *Ardt v Titan Ins Co*, 233 Mich App 685, 693; 593 NW2d 215 (1999). We nonetheless find both allegations to be lacking in merit. With respect to petitioner's unpreserved allegation that he was denied due process when the tax tribunal uncapped the taxable value when the decedent died, we find that petitioner failed to establish plain error affecting his substantial rights. *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 31; 772 NW2d 801 (2009). The tax tribunal was addressing a legal issue, and petitioner had been afforded adequate due process in an administrative proceeding. *Georgetown Place Coop v City of Taylor*, 226 Mich App 33, 51-52; 572 NW2d 232 (1997). With respect to petitioner's allegation that the tax tribunal failed to

¹ We note that there is no argument by respondent, let alone evidence in the record, to suggest that the order was entered solely as a subterfuge to avoid uncapping.

apply MCL 211.27(a)(7)(n) and MCL 211.27(a)(8),² we find that neither provision applied in this case because there was nothing in the record to establish that petitioner submitted an affidavit with the assessor of the local tax collecting unit in which the qualified agricultural property is located as required by both statutory provisions. We also reject petitioner's estoppel

² MCL 211.27a(7)(n) provides that a conveyance is not a transfer of ownership in the following circumstances:

A transfer of qualified agricultural property, if the person to whom the qualified agricultural property is transferred files an affidavit with the assessor of the local tax collecting unit in which the qualified agricultural property is located and with the register of deeds for the county in which the qualified agricultural property is located attesting that the qualified agricultural property shall remain qualified agricultural property. The affidavit under this subdivision shall be in a form prescribed by the department of treasury. An owner of qualified agricultural property shall inform a prospective buyer of that qualified agricultural property that the qualified agricultural property is subject to the recapture tax provided in the agricultural property recapture act, 2000 PA 261, MCL 211.1001 to 211.1007, if the qualified agricultural property is converted by a change in use. If property ceases to be qualified agricultural property at any time after being transferred, all of the following shall occur:

(i) The taxable value of that property shall be adjusted under subsection (3) as of the December 31 in the year that the property ceases to be qualified agricultural property.

(ii) The property is subject to the recapture tax provided for under the agricultural property recapture act, 2000 PA 261, MCL 211.1001 to 211.1007.

MCL 211.27a(8) provides:

If all of the following conditions are satisfied, the local tax collecting unit shall revise the taxable value of qualified agricultural property taxable on the tax roll in the possession of that local tax collecting unit to the taxable value that qualified agricultural property would have had if there had been no transfer of ownership of that qualified agricultural property since December 31, 1999 and there had been no adjustment of that qualified agricultural property's taxable value under subsection (3) since December 31, 1999:

(a) The qualified agricultural property was qualified agricultural property for taxes levied in 1999 and each year after 1999.

(b) The owner of the qualified agricultural property files an affidavit with the assessor of the local tax collecting unit under subsection (7)(n).

argument, where there was no indication that respondent induced petitioner to believe that an exception was granted pursuant to MCL 211.27a(7)(n) based on the handwritten note on the property tax appeal answer. See generally *Clarkson v Judges' Retirement Sys*, 173 Mich App 1, 14; 433 NW2d 368 (1988).

Finally, petitioner claims that the tax tribunal erred when it denied a qualified agricultural exemption under MCL 211.7ee.³ Petitioner did not raise this claim of error in its property tax appeal petition, or in its objection to the tax tribunal's proposed opinion and judgment. There is no evidence that petitioner sought the exemption from the tax levied by a local school district for operating purposes afforded for qualified agricultural properties under MCL 211.7ee. The tax tribunal did not address or decide this issue, and made no reference to the applicability of MCL 211.7ee in the proposed opinion and judgment, or the final opinion and judgment. Thus, this issue is not preserved. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). We decline to review this unpreserved claim of error that was never raised before, addressed, or decided by the tax tribunal. *Rutherford v Dep't of Social Servs*, 193 Mich App 326, 330; 483 NW2d 410 (1991).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Douglas B. Shapiro

³ MCL 211.7ee(1) provides that qualified agricultural property is generally exempt from a local school district's tax.